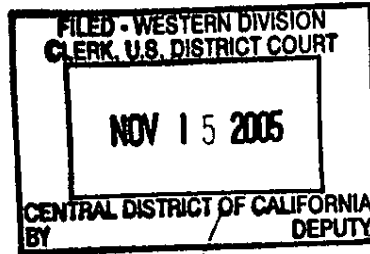
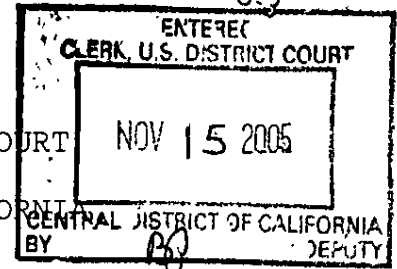


EXHIBIT D



Priority
Send
Cld
Enter
JS-5/JS-6
JS-2/JS-3



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Sandra Purowitz, Individually,
and on Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

DreamWorks Animation SKG, Inc.,
Jeffrey Katzenberg, Katherine
Kendrick, Kristina M. Leslie,
Roger A. Enrico, Paul G. Allen,
Lewis W. Coleman, David Geffen,
Mellody Hobson, Nathan Myhrvold,
Howard Schultz and Does 1-100

Defendants.

Civil Action No. CV 05-6090
MRP (VBKx)

ORDER DENYING PLAINTIFF'S
MOTION TO REMAND

Sandra Purowitz, on behalf of herself and all others similarly situated ("Plaintiff") filed a class action lawsuit against DreamWorks Animation SKG, Inc. ("DreamWorks"), Jeffrey Katzenberg, Katherine Kendrick, Kristina M. Leslie, Roger A. Enrico, Paul G. Allen, Lewis W. Coleman, David Geffen, Mellody Hobson, Nathan Myhrvold, Howard Schultz and Does 1-100 (collectively, "Defendants") in Los Angeles County Superior Court on July 29, 2005, alleging claims under §§ 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act") relating

21

1 principally to statements made by DreamWorks regarding its revenue
2 recognition policy and certain home video sales and estimates.
3 Defendants removed the action to federal court pursuant to the
4 Securities Litigation Uniform Standards Act of 1998 ("SLUSA") and
5 Plaintiff has moved to remand. The sole issue before the Court is
6 whether SLUSA permits removal to federal court in this instance.

7 There is a split in authority in this district and in other
8 districts as to the issue of whether a class action alleging solely
9 violations of federal law may be removed to federal court pursuant to
10 SLUSA. In *Brody v. Homestore, Inc.* ("Brody"), 240 F. Supp. 2d 1122
11 (C.D. Cal. 2003), the Court looked to the text and legislative intent of
12 SLUSA and found that it does authorize removal in such cases. More
13 recently, in *Pipefitters Local 522 and 633 Pension Trust Fund v. Salem*
14 *Communications Corp.* ("Pipefitters"), No. CV 05-2730-RGK, 2005 U.S.
15 Dist. LEXIS 14202 (C.D. Cal. June 28, 2005), the Court held that the
16 plain language of SLUSA unambiguously states that removal is improper
17 where only federal claims are present. This Court is in agreement with
18 the conclusion reached in *Brody*, and denies the Plaintiff's motion to
19 remand for the reasons set forth below.

20 Prior to the enactment by Congress of SLUSA in 1998, state and
21 federal courts had concurrent jurisdiction over claims brought under the
22 Securities Act. See 15 U.S.C. § 77v(a). SLUSA changed this by
23 authorizing the removal to federal court of certain class actions
24 involving nationally listed securities. See 15 U.S.C. §§ 77p(b)-(c),
25 77v(a). The relevant portion of SLUSA is subsection (c):

26
27 (c) Removal of covered class actions. Any covered class action
28 brought in any State court involving a covered security, as set forth in

1 subsection (b), shall be removable to the Federal district court for the
2 district in which the action is pending, and shall be subject to
3 subsection (b).
4

5 15 U.S.C. § 77p(c). Subsection (b), in turn, reads as follows:
6

7 (b) Class action limitations. No covered class action based upon
8 the statutory or common law of any State or subdivision thereof may be
9 maintained in any State or Federal court by any private party alleging-

10 (1) an untrue statement or omission of a material fact in
11 connection with the purchase or sale of a covered security; or

12 (2) that the defendant used or employed any manipulative or
13 deceptive device or contrivance in connection with the purchase or sale
14 of a covered security.
15

16 15 U.S.C. § 77p(b).
17

18 Employing an interpretation of subsection (c) based on that of the
19 *Pipefitters* Court, Plaintiff argues that the phrases "as set forth in
20 subsection (b)" and "shall be subject to subsection (b)" refer the
21 reader to the phrase "based upon the statutory or common law of any
22 State or subdivision thereof" from subsection (b), with the result that
23 only covered class actions based at least in part upon state law claims
24 may be properly removed. As there are not any state law claims in this
25 case, Plaintiff argues that removal here was improper. However, as
26 Defendants correctly point out, Plaintiff's reading of subsection (c)
27 leads to the somewhat bizarre outcome that only those claims expressly
28 prohibited in either state or federal court by subsection (b) - claims

1 based on state law - are by themselves removable. Federal claims will
2 only be removable to the extent they are coupled with state law claims,
3 which state law claims will then be required to be dismissed upon
4 arrival in federal court.

5 Notwithstanding this anomalous outcome, Plaintiff argues that this
6 Court should find that the plain language of § 77p(b)-(c) does not
7 authorize the removal of federal claims by themselves. However, this
8 Court disagrees with the interpretation of § 77p(b)-(c) set forth in
9 *Pipefitters* and proposed here by Plaintiff. As this Court reads
10 subsection (c), the phrase "as set forth in subsection (b)" does not
11 modify merely "[a]ny covered class action", but rather the entire
12 preceding phrase, "[a]ny covered class action brought in any State court
13 involving a covered security." Had Congress intended subsection (c) to
14 to be read as Plaintiff suggests, it could have inserted the phrase "as
15 set forth in subsection (b)" immediately after the words "covered class
16 actions," in which case Plaintiff's reading would clearly be correct.
17 However, by drafting subsection (c) as it did, the words "as set forth
18 in subsection (b)" appear to be shorthand not for the concept that such
19 claims must be based on state law, but rather for the lengthier contents
20 of subsections (b)(1) and (b)(2), which set forth the types of claims
21 that are permissible as federal but not as state law claims. Read this
22 way, application of subsection (c) leads to the perfectly sensible
23 outcome that federal claims of the type described in subsections (b)(1)
24 and (b)(2) are removable to federal court, whereas state claims of the
25 type prohibited in either state or federal court under subsection (b)
26 are not.

27 The *Pipefitters* opinion, along with several other cases from other
28 jurisdictions that Plaintiff cites in support of her interpretation,

1 also places great weight on the phrase "and shall be subject to
2 subsection (b), " and argues that these words should be read to mean
3 that "removal is allowed only for class actions "subject to subsection
4 (b)," i.e., claims based on state law. *Pipefitters*, 2005 U.S. Dist.
5 LEXIS 14202 at *6. However this is not what the statute says. There
6 is a difference between saying that 'any covered class action subject to
7 subsection (b) shall be removable' and ' any class action shall be
8 removable, and shall be subject to subsection (b).' The former requires
9 that removable class actions be those class actions that are the subject
10 of subsection (b); the latter simply confirms that subsection (c) does
11 not override subsection (b) by allowing for the removal of state claims
12 otherwise prohibited by subsection (b). It is the latter formulation
13 that Congress chose in drafting subsection (c). Thus, while in
14 agreement with the *Brody* court that the language of subsection (c) is
15 "inartfully (or even inaccurately) worded," this Court finds that the
16 reading proposed by Defendants is the correct one.

17 Plaintiff points us to the proposition that "[l]egislative history
18 is irrelevant to the interpretation of an unambiguous statute."
19 *Pipefitters*, 2005 U.S. Dist. LEXIS 14202 at *8, quoting *Davis v.*
20 *Michigan Dep't of Treasury*, 489 U.S. 803, 808 n.3 (1989). However
21 where, as here, the statutory language is at best ambiguous, a review of
22 the relevant legislative history is appropriate. In this case, the
23 legislative history makes clear that in enacting SLUSA, Congress was
24 attempting to close a loophole in the Private Securities Litigation
25 Reform Act of 1995 ("PLSRA"), by which plaintiffs were attempting to
26 avoid the increased procedural hurdles to securities lawsuits put in
27 place by PLSRA by filing in state, rather than federal court. As
28 Defendants note in their opposition brief, the legislative record is

1 replete with statements to the effect that the intent of Congress in
2 enacting SLUSA was to make the federal court the exclusive venue for
3 lawsuits with respect to nationally listed securities. Neither
4 Plaintiff's brief nor any of the opinions cited by Plaintiff in support
5 of her motion to remand provide any convincing arguments or examples to
6 the contrary. Thus, not only is Plaintiff's interpretation of the
7 relevant provisions of SLUSA unconvincing in its own right, it is simply
8 irreconcilable with the manifest intent of Congress in enacting the
9 legislation.

10 The Court concludes that this action is removable pursuant to 15
11 U.S.C. § 77p(b)-(c). Accordingly, Plaintiff's motion to remand is
12 DENIED.

13
14 IT IS SO ORDERED.

15
16 DATED: November 14, 2008

Mariana R. Pfaelzer
Honorable Mariana R. Pfaelzer

United States District Judge

17
18
19
20
21
22
23
24
25
26
27
28